

REPORT TO ABERDEENSHIRE DIVISIONAL LICENSING BOARDS

CENTRAL BOARD 21ST AUGUST 2019

SOUTH BOARD 28TH AUGUST 2019

NORTH BOARD 30TH AUGUST 2019

REVIEW OF FEES

1 Recommendations

The Licensing Boards are recommended to:

- 1.1 **Agree to a formal consultation on proposed changes to certain Licensing Board fees as detailed in this report and in Appendix 2 from the 30th August to the 20th September.**
- 1.2 **Agree that the results of the consultation exercise be reported back to the Licensing Boards in October with a view to introducing any changes to the fees from 1st November 2019.**

Background / Discussion

- 2.1 The Licensing (Scotland) Act 2005 as amended provides for a mixed approach to licensing fees. The majority of the fees are set by legislation, particularly the Licensing (Fees) (Scotland) Regulations 2007 (“the Regulations”). The Aberdeenshire Licensing Boards currently charge the maximum fee, as do all Boards across Scotland, permitted under the regulations for those fees which are set.
- 2.2 However, there are some types of application where there is more discretion afforded to local licensing boards. Under the Regulations, licensing boards are empowered to set their own fees for:-
 - **Transfer on Application of the Licence Holder under s. 33(1) which includes an application for variation under s.35 (1)**
 - **Transfer on Application of the Licence holder under s. 33(1) without an application for variation**
 - **Transfer on Application of a person other than the licence holder under s. 34(1) which includes an application for variation under s.35(1)**
 - **Transfer on Application of a person other than the licence holder under s. 34(1) without an application for variation**
 - Major Variations
 - Replacement Personal Licences
- 2.3 The existing fees were set by the Licensing Boards prior to the implementation of the 2005 Act in 2009 and have not been reviewed since.

Methodology in reviewing Licence fees

- 2.4 Regulation 13 states that “in determining any fee, a board is to have regard to the desirability of ensuring that the total fees payable under these Regulations to that Board in respect of any period are likely to be broadly equivalent to the expenses incurred by that Board, and the council for the area of that Board, in administering the Act generally during that period”. However, the Provision of Services Regulations 2009 which implements the European Services Directive from 2006 restricts the discretion afforded to the Boards slightly in this regard as charges should not exceed the cost of procedures and formalities. This focusses the attention to how much does it cost to process, hear and grant applications but does not permit the costs of enforcement action against unlicensed operators to be included in the costs.

Major Variation Fees

2.5 Major variations are not defined in the legislation. Minor variations are defined as

(1) a variation of the layout plan which is not inconsistent with the operating plan

(2) a restriction on access for children and young persons

(3) a variation of any of the information relating to the premises manager including the substitution of a new premises manager.

Any variation which does not fall under the minor category is treated as being a major. Officers have undertaken an analysis of how much the average major variation application costs to process. Major variations, by their nature, differ from application to application. Some can be relatively straightforward, others can be as complex as a new licence application. The process for dealing with a major variation is very similar to that of a new premises with a lot of work involved including consultation, resolving issues, mediation, negotiating amendments to applications and coordinating with consultees. Officers have split the applications, for major variations of licences into three categories:-

Category	Number across Aberdeenshire over the last 2 years
Straightforward applications with no objections or representations	60
Applications where there have been objections or representations however these have been resolved due to work done by officers and applicants negating the need for a hearing	45
Applications where there has been a need to hold a hearing where objections or representations could not be resolved in advance.	10

This information is useful in assisting to calculate an average time spent on a major variation application in order to calculate the average cost of processing. The legislation provides that each application of a specific type should be charged the same, therefore regardless of the time spent processing an application or whether an application requires a hearing, the fee that is charged should be the same.

2.6 Each application is treated very much on its own merits and so officers have taken account of all of the applications of the different types that have been presented to the Boards in the last 2 years to get a flavor for the types of applications presented and an idea of the time spent on each of the applications which then gives an indication of the average time spent on that type of transaction, albeit that it is not an exact science.

2.7 Taking into account the number of applications received in each category and averaging this out over all of the received applications, officers have been able to calculate how much the average application would cost taking into consideration all factors including staff time. On average, a major variation costs the Council £354.29 to process. This is substantially higher than the current fee of £200. The Corporate Charging Policy seeks to ensure that there is full cost recovery wherever possible therefore it is proposed to raise the fee for a major variation to £350 and should be increased by inflation as notified to the Head of Legal and Governance by the Head of Finance each year from the 1st April beginning from 1st April 2021.

Transfer Fees

2.8 The current transfer with a variation is set at £200. Following analysis by officers, this would adequately cover the cost of a transfer with a minor variation, however does not cover the cost of a transfer with a major variation. The current fee structure only covers a "variation" with no

distinction between minor and major variations. Officers propose to amend the current fee structure by distinguishing fees for transfers, transfers with minor variations, and transfers with major variations. The proposal is to agree a transfer fee of £180 and a major variation fee of £350, as per above. Then the relevant fee is calculated depending on the requirements of the application, for example, if an applicant wants a transfer with a change of premises manager, the fee payable would be the transfer fee plus the relevant minor variation fee. Similarly, if the application is for a transfer with major variation, the fee payable would be the transfer fee plus the major variation fee. The proposals are set out in Appendix 1 to this report alongside the current fee and the national average comparator. The proposed consultation is set out at Appendix 2.

Replacement Personal Licences

- 2.9 Boards can also set costs for replacement personal licences where these have been misplaced by the holder. The current fee is £10 and on analysis a proposal of £20 going forward would be appropriate.
- 2.10 Cost comparisons with other Licensing Boards across the country have been completed and are included for those fees that there is a proposed increase. The Aberdeenshire Council fees have not been reviewed since September 2009. Some Boards charge by rateable value in the same way that fees are charged for the initial premises licence fee, others charge by the type of variation. Officers have compared our current fees with other local authorities and we are lower others as shown in Appendix 3 shows the proposals where there is an increase proposed along with how they compare across the country.
- 2.11 It is proposed that in order to ensure that the income keeps up with expenditure that any fee over which the Boards have discretion to set should rise with inflation as set out by the Council's Head of Finance annually from the 1st of April, but that the first of these inflationary increases is not until the 1st April 2021. This is an exception the Corporate Charging Policy as the increase would usually be applied from the next financial year, however, the legislation is clear, and it is only fair, that there can only be one increase in any one financial year and the calculation includes the increased pay award for next year.

Proposals for Consultation

- 2.12 Officers recommend that fees are structured so that applicants effectively pay for the processing of the type of application that they require. The consultation should focus on:-
- the structure of the fees
 - Inviting comment on the proposed fee table as per the proposed consultation at Appendix 1.
 - canvassing views of the public, including the trade, on applying an inflationary increase every year in line with the Council's corporate charging policy rather than a large price increase going forward. It should be noted that the Boards are separate legal entities from the Council and are not subject to their policies however applying inflationary increases with reviews every 3 years in accordance with the corporate policy ensures that fees are at an appropriate level,
 - the proposal to start the first inflationary increase from 1st April 2021 as no more than one price increase is permitted in any 1 year period as detailed above.
- 2.13 The consultation would note that proposed new fees will come into force from 1st November this year. Due to the tight timescales, the consultation period will be relatively short. The method of consultation will be electronic through Survey Monkey and emails will be sent to those licensees for whom we have email addresses for and we will utilise social media as well as getting in touch with community councils and our statutory partners. The proposed consultation is set out at Appendix 3.
- 2.14 The Boards will be aware, from previous reports, that the Scottish Government are currently consulting on proposed changes to occasional licence fees and the Boards response to that consultation has been submitted to the Scottish Government. Other fees charged by the Council for liquor licensing are set by the Scottish Government.

2.15 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

3 Implications and Risk

- 3.1 An equality impact assessment has been carried out as part of the development of the proposals set out above. It is included as Appendix 4 and no impact has been identified at this stage. Any equalities issues which are brought to our attention during the public consultation stage will be assessed prior to bringing finalized proposals to the Boards.
- 3.2 There are financial implications in that increased fees will increase income.
- 3.3 The following Risks have been identified as relevant to this matter on a Corporate Level; ACORP001 – Budget Pressures and the following Risks have been identified as relevant to this matter on a Strategic Level BSSR001 – Balancing The Books, Directorate Risk Registers].

Ritchie Johnson

Director of Business Services

Report prepared by Lauren Cowie, Principal Solicitor (Governance) and Clark Simpson (Paralegal)

Date July 2019

APPENDIX 1

CURRENT FEES, PROPOSED FEES and NATIONAL AVERAGE COMPARATOR

Type of Application	Current Fee	National Average Comparator	Proposed Fee	Comment
S.33 and s.34 – Transfer	£180.00 (included variation element)	£90.04.	£180.00	There is no proposal to increase this fee as the current fee sufficiently covers the transfer costs. The variation element of an application will be charged separately. There is no proposal to reduce this fee as the costs of transfer, particularly for contentious transfers, are adequately met by the existing £180 fee.
S.33 and s.34 – Transfer – With Minor Variation	£200.00	£233.46	Transfer with Minor Variations - £200.00 Transfer with Change to Premises Manager Minor Variation - £211.00	The majority of fees that fall into this category will not change other than where there is a change to the premises manager. The proposal is that the transfer fee is agreed at £180 and then the appropriate minor fee is added. This is £20 for layout changes or restrictions to children and young persons access or £31 for a change to the premises manager. Both the £20 and £31 fees are set by the Scottish Government.
Major Variation Fee	£200.00	£302.74	£350.00	This is an increase following analysis of the average time spent on processing major variation applications as detailed in the report.
Replacement Personal Licence Fee	£10.00	£22.15	£20.00	This covers the costs of processing.

APPENDIX 2

PROPOSED CONSULTATION

The Aberdeenshire North, Central and South Divisional Licensing Boards are consulting on proposed amendments to their fees for major variations, transfers and replacement personal licences.

The Licensing Boards have maintained the current fee structure for the last 10 years however this is no longer sustainable and there are proposals for increasing how fees are calculated.

Please complete the following questions to let us know your views.

1. Are you a

- a. Member of the licensed trade
- b. Statutory Consultee
- c. Member of the public?

2. Do you agree that the Licensing Boards should aim to recover their costs as much as possible through their fees?

- a. Yes
- b. No

3. The proposal is to change how fees are calculated. Currently, there is a set fee for a transfer with a variation, without specifying whether that transfer is a major or a minor variation. This means that all applicants are paying the same regardless of how much that application costs to process.

The proposal means that applicants pay for the application they have submitted to be processed. E.g. if a transfer application is required only, then the fee is the transfer fee. If the application is for a transfer and a variation, the applicant pays for the transfer fee plus the appropriate variation fee. The impact is minimal for applicants who apply for a transfer with or without a minor variation. There is some impact for those who wish to apply for a major variation.

Proposed Fee Structure as of 1st November 2019

Type of Application	Proposed Fee	Comment
S.33 and s.34 – Transfer	£180.00*	There is no proposal to increase this fee as the current fee sufficiently covers the costs.
Minor Variation	£20.00	This fee is set by statute.
Minor Variation – Change to Premises Manager	£31.00	This fee is set by statute.
Major Variation Fee	£350.00*	This is an increase from the current fee as explained in the body of the report.
Replacement Personal Licence	£20.00*	This is an increase to match costs.

Should an applicant require to apply for a variation at the same time as a transfer, then they will be liable to pay for the transfer fee and the relevant variation fee.

Those fees marked with an asterisk will increase by inflation as set by the Head of Finance annually from 1st April 2021.

Do you think that this is a fair way to charge licensing fees?

Yes.

No - If not, what would you propose instead?

4. By applying inflation to the discretionary element of the fees the fees will gradually increase rather than a sharp increase at every review point. Do you have any comments on the proposal to apply inflation on the fees every year from 1st April 2021?

- a. Yes – Comments.
- b. No

Thank you for your time.

APPENDIX 3 - COMPARISON OF PROPOSED INCREASES OF FEES ACROSS THE COUNTRY

Major Variation Council	Max Fee
Aberdeenshire (current)	£200.00
Aberdeenshire (Proposed)	£350.00
Aberdeen City	£150.00
Angus	£200.00
Clackmannanshire	£170.00
Dumfries and Galloway	£1,000.00
East Ayrshire	£125.00
East Dunbartonshire	£130.00
East Lothian	£170.00
East Renfrewshire	£220.00
Edinburgh City	£130.00
Falkirk	£160.00
Fife	£160.00
Glasgow	£160.00
Highland	£721.00
Inverclyde	£200.00
Midlothian	£160.00
Moray	£500.00
North Ayrshire	£900.00
North Lanarkshire	£160.00
Orkney Islands	£100.00
Perth and Kinross	£500.00
Renfrewshire	£175.00
Scottish Borders	£210.00
Shetland Islands	£165.00
South Ayrshire	£200.00
South Lanarkshire	£1,333.33
Stirling	£200.00
West Dunbartonshire	£200.00
West Lothian	£100.00
MEAN AVERAGE	£302.74

Replacement Personal Licence Council	Max Fee
Aberdeenshire (current)	£10.00
Aberdeenshire (proposed)	£20.00
Aberdeen City	£25.00
Angus	£27.00
Dumfries and Galloway	£25.00
Dundee	£20.00
East Ayrshire	£20.00
East Dunbartonshire	£15.00
East Lothian	£25.00
East Renfrewshire	£25.00
Edinburgh City	£25.00
Falkirk	£25.00
Fife	£20.00
Glasgow	£20.00
Highland	£11.00
Inverclyde	£35.00
Midlothian	£25.00
Moray	£25.00
North Ayrshire	£25.00
North Lanarkshire	£10.00
Orkney Islands	£20.00
Perth and Kinross	£10.00
Renfrewshire	£25.00
Shetland Islands	£40.00
South Ayrshire	£20.00
Stirling Council	£20.00
West Dunbartonshire	£25.00
West Lothian	£25.00
MEAN AVERAGE	£22.15

EQUALITY IMPACT ASSESSMENT

Stage 1: Title and aims of the activity (“activity” is an umbrella term covering policies, procedures, guidance and decisions).	
Service	Business Services
Section	Legal and Governance
Title of the activity etc.	Review of Liquor Licensing Fees
Aims and desired outcomes of the activity	To review the liquor licensing fees to enable the service to recover costs.
Author(s) & Title(s)	Lauren Cowie, Principal Solicitor (Governance)

Stage 2: List the evidence that has been used in this assessment.	
Internal data (customer satisfaction surveys; equality monitoring data; customer complaints).	
Internal consultation with staff and other services affected.	
External consultation (partner organisations, community groups, and councils).	
External data (census, available statistics).	
Other (general information as appropriate).	

Stage 3: Evidence Gaps.	
Are there any gaps in the information you currently hold?	The proposal has not yet gone out to consultation and so we have not received evidence that there will be an equalities implication however should any evidence be forthcoming, this assessment will be reviewed and updated.

Stage 4: Measures to fill the evidence gaps.		
What measures will be taken to fill the information gaps before the activity is implemented? These should be included in the action plan at the back of this form.	Measures:	Timescale:
	Public Consultation	End September 2019

Stage 5: Are there potential impacts on protected groups? The protected groups covered by the equality duty are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The duty also covers marriage and civil partnerships, but only in respect of eliminating unlawful discrimination. Who is affected by the activity or who is intended to benefit from the proposed policy and how? Please complete for each protected group by inserting "yes" in the applicable box/boxes below.				
	Positive	Negative	Neutral	Unknown
Age – Younger Eliminating unlawful discrimination, harassment and victimisation Advancing equality of opportunity Promoting good relations among and between different age groups				The impacts are all unknown at this stage however there is minimal risk to equalities as applicants who will be affected usually apply on behalf of businesses.
Age – Older				
Disability				
Race – (includes Gypsy Travellers)				

Religion or Belief				
Sex (Gender)				
Pregnancy and maternity				
Sexual orientation – (includes Lesbian/ Gay/Bisexual)				
Gender reassignment – (includes Transgender)				
Marriage and Civil Partnership eliminating unlawful discrimination				

Stage 6: What are the positive and negative impacts?		
Impacts.	Positive (describe the impact for each of the protected characteristics affected)	Negative (describe the impact for each of the protected characteristics affected)
Please detail the potential positive and/or negative impacts on those with protected characteristics you have highlighted above. Detail the impacts and describe those affected.		

Stage 7: Have any of the affected groups been consulted?	
If yes, please give details of how this was done and what the results were. If no, how have you ensured that you can make an informed decision about mitigating steps?	

Stage 8: What mitigating steps will be taken to remove or reduce negative impacts?		
These should be included in	Mitigating Steps	Timescale

any action plan at the back of this form.		

Stage 9: What steps can be taken to promote good relations between various groups?	
These should be included in the action plan.	

Stage 10: How does the policy/activity create opportunities for advancing equality of opportunity?

Stage 11: What equality monitoring arrangements will be put in place? How the EIA will be used to monitor the proposal	
These should be included in any action plan (for example customer satisfaction questionnaires).	

Stage 12: What is the outcome of the Assessment?		
Please complete the appropriate box/boxes	1	No negative impacts have been identified –please explain.
	No negative impacts are identified at this stage however a full assessment will be done after the public consultation element before we take a paper back to the Licensing Boards for final determination.	
	2	Negative Impacts have been identified, these can be mitigated - please explain. * Please fill in Stage 13 if this option is chosen.
	3	The activity will have negative impacts which cannot be mitigated fully – please explain. * Please fill in Stage 13 if this option is chosen

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* Stage 13: Set out the justification that the activity can and should go ahead despite the negative impact.

Stage 14: Sign off and authorisation.

Sign off and authorisation.	1) Service and Team	Business Services, Legal and Governance		
	2) Title of Policy/Activity	Review of Liquor Licensing Fees		
	3) Authors: I/We have completed the equality impact assessment for this policy/activity.	Name: Lauren Cowie Position: Principal Solicitor Date: 01.08.19 Signature:	Name: Position: Date: Signature:	
		Name: Position: Date: Signature:	Name: Position: Date: Signature:	
	4) Consultation with Service Manager	Name: Geraldine Fraser Date:		
	5) Authorisation by Director or Head of Service	Name: Karen Wiles Position: Head of Service Date:	Name: Position: Date:	
	6) If the EIA relates to a matter that has to go before a Committee, Committee report author sends the Committee Report and this form, and any supporting assessment documents, to the Officers responsible for monitoring and the Committee Officer of the relevant Committee. e.g. Social Work and Housing Committee.			Date:
	7) EIA author sends a copy of the finalised form to: equalities@aberdeenshire.gov.uk			Date:

(Equalities team to complete)

Has the completed form been published on the website? YES/NO

Date:

